In the High Court of Judicature at Madras

Dated : 5.9.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.1205 of 2007

The Commissioner of Income Tax
Chennai. .. Appellant

Vs

M/s. EWS Finance & Investments Ltd.,
Dhun Building
827, Anna Salai
Chennai 2 .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 29.12.2006 made in I.T.A.No.2440/Mds/2005 for the assessment year 2001-02 against the order of the Commissioner of Income Tax (A) III Chennai, dated 18.8.2005 made in ITA No.105/2005-06/A-III for the assessment year 2001-2002 against order of company circle II (1),Chennai -34 PAN/GIR No.AAACE 1989-Q-dated 18.3.2005.

For Appellant:- Mrs. Pushya Sitaraman
` Standing Counsel for Income Tax

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeal is filed by the revenue against the order of the Income Tax Appellate Tribunal Madras 'A' Bench made in I.T.A.No.2440/Mds/2005 dated 29.12.2006. The relevant assessment year is 2001-02.

2. The assessment already completed in respect of the assessment year 2001-02 has been reopened by the assessing officer to disallow the expenditure attributable to exempt income from dividend in view of the introduction of Section 14A of the Income Tax Act and as such an order has been passed disallowing the expenditure attributable to the exempted income. Aggrieved by the

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order of the assessing officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) on the ground that the reopening was contrary to the proviso appended to Section 14A. The Commissioner of Income Tax (Appeals) allowed the appeal. The Revenue in turn took the matter before the Income Tax Appellate Tribunal and the Tribunal dismissed the appeal. Aggrieved by the order of the Tribunal, the present tax case appeal is filed by formulating the following question of law:-

> 'Whether in the facts and circumstances of the case, the Tribunal was right in holding that the re-opening to disallow expenditure on exempted income as per Section 14A was bad in law as the assessment year in question was 2001-02, when the return was filed only after the introduction of the section ?

3. Learned counsel appearing for the Revenue submitted that the assessee filed its return in respect of the assessment year 2001-02 only after the introduction of the section and as such the question of opening up an assessment for an earlier year does not arise. He further contended that CBDT issued a circular in Circular No.11 dated 23.7.2001, which explains the proviso appended to Section 14A of the Act. As per the circular only where the assessments have become final before the 1st April 2001, they should not be reopened under Section 147 to disallow the expenditure u/s14A. In the case on hand the return was filed only after 1.4.2001. When that is the fact, the question of finality of proceedings prior to introduction of section does not arise at all. Hence the reasoning of the Commissioner of Income Tax (Appeals), which was confirmed by the Tribunal is not correct.

4. We heard the arguments of the learned counsel and perused the materials on record.

5. Section 14A reads as follows:

> For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.
> Provided that nothing contained in this section shall empower the Assessing officer either to reassess under Section 147 of pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154,

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for any assessment year beginning on or before the 1st day of April 2001)

6. The said proviso was incorporated with the intention of avoiding litigation in the issue in respect of all the assessment years prior to assessment year 2002-03. The relevant assessment year in this case is 2001-02, which is unequivocally covered by the proviso. The proviso prohibits reassessment for the assessment year beginning on or before 1st April 2001. Hence the reassessment made in this case is against the statutory provisions. The circular relied on by the counsel appearing for the Revenue to sustain her case that the cases, wherein the finality has not been reached that could be brought within the ambit of Section 14A for the purpose of reopening of an assessment reads as follows:-

"To
All CCITs,
All DGITs.

Subject : Restriction on re-opening of completed assessments on account of provisions of section 14A— Clarification regarding.

Sir,

The Finance Act, 2001, has inserted section 14A in the Income-tax Act, 1961, wherein it was specifically provided that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of total income under the Act. The amendment takes effect from April 1, 1962.

2. Section 14A was introduced retrospectively in order to clarify and state the position of law that any expenditure relatable to income which does not form part of total income cannot be set off against other taxable income. This section was not introduced with prospective effect, as that would have implied that before the introduction of the said provisions, expenditure incurred to earn exempt income was allowable.

3. Instances of reopening of old assessments, which had attained finality, after insertion of section 14A in the Act, have come to the notice of the Board. Reopening of past completed assessments, having attained finality, on the basis of newly inserted

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provisions of section 14A is likely to cause hardship to a large number of taxpayers and would result in increasing avoidable litigation.

4. The Board have considered this matter and hereby directs that the assessments where the proceedings have become final before the first day of April, 2001 should not be re-opened under section 147 of the Act to disallow expenditure incurred to earn exempt income by applying the provisions of newly inserted section 14A of the Act.

5. This may be brought to the notice of all officers in your region immediately.

Yours faithfully,

(Sd.) Rahul Navin, Under Secretary (TPL-I),"

7. From the reading of the above Circular , it is very clear that the Circular has not stated anything as contended by the learned counsel for the Revenue that even for the assessment year 2001-02 this proviso can be invoked. The circular came to be issued on the ground that the instances of reopening of old assessments, which had attained finality after insertion of section 14A of the Income Tax Act were brought to the notice of the Board and the Board upon considering all those cases, was of the view that reopening of past completed assessments, having attained finality on the basis of the inserted proviso to Section 14A would cause hardship to large number of taxpayers and would result in increasing avoidable litigation. In those context, the Board considered the matter and directed that the proceedings which have become final before 1st April 2001 should not be reopened under Section 147 of the Act to disallow expenditure incurred to earn exempt income by applying the provisions of newly inserted section 14A of the Act. Further, the direction appended has not at all been taken note of in the circular. Dehors the proviso also on a reading of the circular, we are of the view that the circular would not in any way advance the case of the Revenue that wherever the assessment has not been completed and attained finality that can be reopened. If the contention is accepted that even for an assessment year which is pending before the hierarchy of authorities the assessing officer can

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invoke the provisions and reopen the assessment, which is not the intention of the legislature. Hence, we are not able to accept the argument of the learned counsel for the Revenue and the appeal deserves to be dismissed as no question of law involves. The tax case appeal is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

krr/

To

1.The Assistant Registrar, Income-Tax Appellate Tribunal, III Floor, Rajaji Bhavan, Besant Nagar, Madras 90

2.The Commissioner of Income Tax (A)III, Chennai-34.

3. The Assistant Commissioner of Income Tax, Company Circle II (1) Chennai 34.

4.The Additional Commissioner of Income Tax,
Company Range-II, Chennai.

GG (CO)
km/9.10.

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